

[Latham & Watkins Tax Practice](#)

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COVID-19: IRS Postpones Tax Deadline and Court and Agency Closures Will Delay Federal Tax Cases

Notice 2020-18 provides welcome economic relief from filing and payment obligations for certain federal income taxes; however, traps for the unwary exist.

Tax Deadline – Key Points:

- On March 20, 2020, the Internal Revenue Service (IRS) issued Notice 2020-18, automatically postponing until July 15, 2020 the deadline to file federal income tax returns and make certain federal income tax payments ordinarily due April 15, 2020. Taxpayers are not subject to interest, penalties, or additions to tax if such postponed federal income tax filings and payments are timely made under the new deadline.
- The covered payments are federal income tax payments for the 2019 taxable year and federal estimated income tax payments for the first quarter of the 2020 taxable year. Notice 2020-18 does not extend the time for the payment or deposit of any other type of federal tax or for the filing of any federal information return.
- Notice 2020-18 supersedes and replaces prior Notice 2020-17 issued March 18, 2020, which delayed certain tax payments not exceeding certain dollar amount limitations and required that federal income tax returns be filed or properly extended by April 15, 2020.

Background

Under Section 7508A(a) of the Internal Revenue Code (Code), the Secretary of the Treasury may postpone the time for performing acts under the internal revenue laws for up to one year for taxpayers determined to be affected by a disaster warranting assistance by the federal government under the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act).

On March 13, 2020, the President of the United States issued an emergency declaration under the Stafford Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic.¹ Among other measures, that emergency declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).”

Notice 2020-17 (Superseded)

On March 18, 2020, the IRS released Notice 2020-17, *now superseded* (as discussed below). Notice 2020-17 stated that the Secretary of the Treasury “has determined that any person with a Federal income tax payment due April 15, 2020, is affected by the COVID-19 emergency” and permitted taxpayers to delay payment of certain amounts of Federal income taxes due April 15, 2020 until July 15, 2020 without interest, penalties, or additions to tax.

The delay covered only federal income tax payments for the 2019 taxable year and federal estimated income tax payments for the first quarter of the 2020 taxable year (both including payments of tax on self-employment income) up to a “cap” (generally \$10 million² for corporations and \$1 million for other taxpayers). Notably, the limited payment delay authorized by Notice 2020-17 *did not* extend to the *filing* of federal income tax returns due on April 15, 2020, such that federal income tax returns or properly filed extensions would still have been due on April 15, 2020. Based partly on comments that the mis-matched deadlines for payment and filing could lead to taxpayer confusion, the IRS issued superseding Notice 2020-18.

Notice 2020-18

On March 20, 2020, the IRS issued Notice 2020-18, which supersedes Notice 2020-17. Notice 2020-18 expands the relief provided in Notice 2020-17 in two significant ways:

- It removes the cap or dollar amount limitations on the federal income tax payments that may be deferred until July 15, 2020, so that an eligible payment in any amount may be deferred.
- It automatically postpones the due date for *filing* federal income tax returns due on April 15, 2020 to July 15, 2020, so that the deadlines for filing and payment are matched.

Accordingly, the period beginning on April 15, 2020 and ending on July 15, 2020 will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the federal income tax returns or failure to pay the federal income taxes postponed by Notice 2020-18. Note that the IRS has encouraged taxpayers anticipating a refund to file in advance of the delayed filing date.

Finally, Notice 2020-18 specifically states, “No extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any Federal information return.”

Thoughts on Compliance

For most individual taxpayers and some corporate taxpayers, Notice 2020-18 provides welcome economic relief in a straightforward manner. However, certain taxpayers — particularly businesses — should keep in mind that Notice 2020-18 does have apparent limitations that may create traps for the unwary. Such traps include:

- Importantly, the payment or deposit of federal employment taxes, federal excise taxes, and federal estate and gift taxes, all appear to be unaffected by Notice 2020-18. Similarly, Notice 2020-18 expressly states that it does not extend the filing deadlines for federal information returns (*i.e.*, returns that report tax information but do not report a tax liability).
 - Classic examples of information returns are those that fall under the definition of “information return” for purposes of Section 6721 of the Code, such as Forms 1094 and 1095 (related to Affordable Care Act shared responsibility payments), 1099 (related to payments of income other

than wages, salaries, and tips), and W-2 (related to payments of wages, salaries, and tips). Many, if not most, of those information returns are unlikely to have been affected by Notice 2020-18 even without the express statement of non-application because their filing deadlines (absent any extension) tend to fall before April 15.

- Notice 2020-18 does not specify whether returns for entities such as tax-exempt organizations, partnerships, or S corporations — all of which generally do not report income tax due — are information returns for its purposes. Generally speaking, case law, Treasury Regulations, and other pieces of administrative guidance do refer to returns for those types of entities as information returns even though they are not defined as information returns for purposes of Section 6721 of the Code. Note that for an exempt organization subject to the unrelated business income tax, Form 990-T may be considered a federal income tax return.
- The applicability of Notice 2020-18 to certain other federal tax payments and related returns is unclear. These federal tax payments include installment payments for the Section 965 transition tax (assessed in taxable year 2017 paid over eight years) and certain withholding taxes (such as those imposed on payments to nonresident aliens and foreign corporations). The IRS may issue additional guidance specific to other federal tax payments and returns, the status of which is ambiguous under Notice 2020-18.
- The relief in Notice 2020-18 covers only federal income tax payments and returns due on April 15, 2020. There is no provision at present, for example, for a fiscal year taxpayer whose federal income tax return is due, for example, on May 31, 2020 to delay filing and payment to a later date.
- Notice 2020-18 applies only to federal income taxes and federal income tax returns; it does not directly affect taxes that may be imposed by other taxing authorities such as states, counties, or cities. Some of those taxing authorities may mirror the revised federal deadlines, but only a few have issued such guidance to date. Thus, taxpayers facing state and local tax filing and payment deadlines are advised to check current state and local guidance online to comply with payment, filing and extension deadlines.

Likely delays are anticipated as the COVID-19 pandemic impacts the operations of the IRS, the U.S. Department of Justice Tax Division (Tax Division), the U.S. Tax Court (Tax Court), and other courts that adjudicate federal tax controversies. Taxpayers should expect further guidance and developments in the near future and monitor the agencies' public announcements.

Tax Controversies – Key Points:

- The Tax Court has canceled all trial sessions throughout the country through April 30, 2020. Additionally, the Tax Court building in Washington, D.C. is closed until further notice. Nevertheless, litigants should treat deadlines as unchanged, particularly statutory deadlines for filing documents such as petitions or notices of appeal.
- The Department of Justice has not yet issued any statements related to Tax Division operations in light of the COVID-19 pandemic, but delays in most federal tax litigation can be expected. Coordination with opposing counsel and the courts is recommended. Tax Division officials have noted

that the Division's attorneys are continuing to work remotely in support of the agency's tax enforcement mission.

- The IRS has instituted significant reductions in staffing in certain locations, as well as office closures in high-impact areas, in order to facilitate social distancing. The IRS has also temporarily closed all Taxpayer Assistance Centers and discontinued face-to-face service throughout the country, as has the Taxpayer Advocate Service, which remains open to receiving phone calls.

Court Operations and Procedures

Generally speaking, courts across the country are altering their operations and procedures in order to minimize the transmission of COVID-19. Those modifications vary among courts and the most up-to-date information can be found by visiting the courts' websites.

Of particular relevance to litigants in federal tax cases, the Tax Court has canceled all trial sessions throughout the country through April 30, 2020. In the press releases announcing the cancellations,³ the court stated that it "expects that the parties will continue to work together to exchange information and resolve pending issues" and that unresolved cases will be scheduled for trial at a later date.

On March 18, 2020, the Tax Court announced that its building in Washington, D.C. would be closed until further notice and that hand delivery of documents will not be accepted.⁴ In the same statement, the court said, "Taxpayers may comply with statutory deadlines for filing petitions or notices of appeal by timely mailing a petition or notice of appeal to the Court." The Tax Court stated that mail would be held for delivery until the it resumes normal operations, and that timeliness would be determined based on the United States Postal Service postmark or the delivery certificate of a private delivery service.

Accordingly, even though the Tax Court building is closed, to satisfy statutory filing deadlines by mail or private delivery, a litigant should ensure that documents to be filed are postmarked no later than the filing deadline or that delivery is certified on or before the deadline as if the Tax Court were open. If a document mailed or sent by a litigant is returned, the litigant should re-mail or re-send it to the Tax Court with a copy of the envelope or container in which it was first mailed or sent in order to prove timeliness.

The Tax Court's March 18, 2020 statement noted that its online eAccess and eFiling systems remain operational. Therefore, parties with upcoming filing deadlines for briefs or motions (which are generally required to be eFiled) should comply with those deadlines absent the Tax Court granting a case-specific extension of time. Note that filing by mail or private delivery service is the only option for filing a petition while the Tax Court building is closed, since petitions are not eligible for eFiling.⁵

For its part, the Department of Justice has not yet issued any statements related to Tax Division operations in light of the COVID-19 pandemic generally or the Office of Management and Budget Memo specifically (discussed below). The Tax Division litigates civil and criminal tax cases on behalf of the United States in the federal district and appellate courts, litigates tax claims in the U.S. Court of Federal Claims and the U.S. Bankruptcy Courts, and supports the Office of the U.S. Solicitor General in tax cases before the U.S. Supreme Court. Because the operations of all the federal courts, particularly concerning trials and court appearances, are widely affected by the pandemic, delays can be expected in the progress of most federal tax litigation. Litigants should, however, remain in contact with opposing counsel and the courts for case-specific details.

Federal Agency Operations

On March 17, 2020, the Office of Management and Budget issued a memorandum for the heads of departments and agencies about operational alignment to slow the spread of COVID-19 (OMB Memo).⁶ The OMB Memo instructed the heads of federal departments and agencies to adjust operations and resources with the dual goals of (1) minimizing face-to-face interactions and (2) re-prioritizing available resources to mission-critical activities. The memorandum also stated that “Agencies shall communicate to the public how service levels may be impacted[.]”

As of March 20, 2020, the IRS has not issued any specific statements referring to operational adjustments pursuant to the OMB Memo. However, the IRS Commissioner reportedly issued a memorandum to employees saying that the agency had taken steps to facilitate social distancing, including closing some offices in high-impact areas and reducing staffing in certain mission-critical locations by 50%.⁷ Additionally, on March 20, 2020, the IRS publicly announced that it would temporarily close all Taxpayer Assistance Centers and discontinue face-to-face service throughout the country.⁸ Likewise, the Taxpayer Advocate Service has suspended walk-in services, but remains open to receive phone calls.

Latham’s Tax Controversy Team is closely following these fast-moving developments affecting tax administration and compliance during the COVID-19 pandemic and Latham lawyers are available for client consultation on these and related issues.

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Endnotes

- ¹ Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act (Mar. 13, 2020) available at <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.
- ² All references to dollar amounts refer to US\$.
- ³ Press Releases dated March 11, 2020 and March 13, 2020 available at <https://www.ustaxcourt.gov/>.
- ⁴ Press Release dated March 18, 2020 available at <https://www.ustaxcourt.gov/>.
- ⁵ See U.S. Tax Court, Practitioners' Guide to Electronic Case Access and Filing 1, 3, 95 (Dec. 1, 2019) available at https://www.ustaxcourt.gov/electronic_access.htm.
- ⁶ Russel T. Vought, Acting Director, Office of Management and Budget, Memorandum for The Heads of Departments and Agencies, M-20-16 (Mar. 17, 2020) available at <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.
- ⁷ Richard Rubin, *U.S. Extends Individual Tax Filing Deadline from April 15 to July 15*, The Wall Street Journal available at https://www.wsj.com/articles/u-s-extends-individual-tax-filing-deadline-to-july-15-11584713903?mod=itp_wsj&mod=&mod=djemlTP_h (updated Mar. 20, 2020 7:53 PM ET)